

REAL PROPERTY EXCHANGE AGREEMENT

THIS REAL PROPERTY EXCHANGE AGREEMENT ("Agreement") is entered into as of the _____ day of _____, 2007, by and between the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, a Kentucky consolidated local government, **acting by and through its METRO PARKS**, with its principal address at 1297 Trevilian Way, Louisville, KY 40213 ("Louisville Metro"), and **1860 MELLWOOD, LLC**, a Kentucky limited liability company with its principal address at 1115 South Fourth Street, Louisville, KY 40203 ("1860") as follows:

WITNESSETH:

WHEREAS, Louisville Metro owns and has claims upon various parcels of real property within an undeveloped area in Louisville, Kentucky, bounded by Interstate Highway 71 on the south, River Road on the north, Beargrass Creek to the west and Shiloh Avenue to the east ("Area"); and

WHEREAS, also within the Area, 1860 owns and has claims upon various parcels of real property ("1860 Parcels"); and

WHEREAS, Louisville Metro may own parcels depicted as Tract 1 and Tract 2 on Exhibit A attached hereto ("City Parcels"); and

WHEREAS, there is one parcel within the Area with unclear title to which both Louisville Metro and 1860 possess putative claims, specifically the parcel having the last owner of record listed as J. Johnson depicted as Tract 3 on Exhibit A attached hereto ("J. Johnson Parcel"); and

WHEREAS, 1860 desires to acquire the City Parcels and acquire clear title to the J. Johnson Parcel in order to lease a portion of the 1860 Property, the City Parcels and the J. Johnson Parcel to Salem Communications for the purpose of constructing and operating a radio transmission tower; and

WHEREAS, Louisville Metro desires to acquire from 1860 a portion of the 1860 Property located adjacent to River Road, as depicted in Exhibit B attached hereto (“1860 Exchanged Parcel”); and

WHEREAS, for the consideration of Louisville Metro’s conveying any interest it might have in the City Parcels to 1860 and of Louisville Metro’s waiving and forgoing all its claims to the J. Johnson Parcel, 1860 agrees to convey to Louisville Metro the 1860 Exchanged Parcel; and

WHEREAS, for the consideration of 1860’s conveying the 1860 Exchanged Parcel to Louisville Metro, Louisville Metro agrees to quitclaim all its rights, title and interest in and to the City Parcels and the J. Johnson Parcel to 1860; and

WHEREAS, the parties agree to convey their interests to the various properties described herein pursuant to the terms and conditions of this Agreement.

AGREEMENT

For and in consideration of the mutual covenants herein set forth, the parties hereto agree as follows:

Section 1. Louisville Metro Obligations.

1.1 Louisville Metro agrees to convey to 1860 by quitclaim deed all its rights, title and interest in and to the City Parcels and the J. Johnson Parcel and to waive and forgo any and all interest in and to the J. Johnson Parcel.

1.2 Louisville Metro agrees to cooperate and assist 1860 to file and procure the Quiet Title Action and Major Subdivision Plat application as described below.

1.3. Louisville Metro agrees to permit 1860 to retain an easement across a portion of the 1860 Exchanged Parcel for vehicular and pedestrian access from River Road to the 1860 Property located north of the railroad track, which easement shall be shown on the

Major Subdivision Plat and shall be approved by Louisville Metro prior to 1860 submitting the application for the Major Subdivision Plat.

1.4. Louisville Metro agrees to permit two billboards currently located on the 1860 Exchanged Parcel to remain for the duration of the current lease between 1860 and Viacom (“Billboard Lease”) and allow 1860 to receive rents under the Billboard Lease for such period.

Section 2. 1860 Obligations.

2.1. 1860 agrees to convey to Louisville Metro, by quitclaim deed all of its rights, title and interest in and to the 1860 Exchanged Parcel immediately upon the approval by Louisville and Jefferson County Planning Commission of an application for a major subdivision plat as described in subsection 2.2.

2.2. 1860, at its sole expense, immediately upon the execution of this Agreement agrees to file, in proper form with the Louisville and Jefferson County Planning Commission, a major subdivision plat to subdivide five (5) parcels owned by 1860 to create the 1860 Exchanged Parcel.

2.3. 1860, at its sole expense, agrees to file in Jefferson Circuit Court a civil action to quiet title to the J. Johnson Parcel.

2.4. 1860 agrees not to renew, extend or amend the Billboard Lease and to cause such billboards to be removed upon the termination of the Billboard Lease.

Section 3. Parcels conveyed AS IS.

Except as otherwise explicitly provided herein, 1860 agrees to accept the City Parcels and the J. Johnson Parcel and Louisville Metro agrees to accept the 1860 Exchanged Parcel AS IS with all faults with no warranties of any kind, except that 1860 agrees to provide Louisville Metro with a copy of the Phase I Environmental Report it had prepared on the 1860 Property.

Section 4. Conveyance of Additional Parcels of 1860 Property.

Louisville Metro is interested in acquiring from 1860 additional parcels of the 1860 Property for public recreational purposes and 1860 is interested in acquiring some additional property owned by Louisville Metro in the Area. Louisville Metro and 1860 agree to enter into negotiations to discuss additional property exchanges or purchases.

Section 5. Representations and Warranties of 1860.

In addition to any other express agreements of 1860 contained herein, the matters set forth in this Section constitute representations and warranties by 1860 which shall be true and correct as of the date of this Agreement. In the event 1860 learns, or has reason to believe, that any of the following representations and warranties may cease to be true, 1860 hereby covenants to give notice thereof to Louisville Metro immediately.

A. Authority of 1860. 1860 is a Kentucky limited liability company and possesses the full power and authority to enter into and perform this Agreement. This Agreement does not conflict with any contract, agreement or commitment to which 1860 is a party.

B. Binding on 1860. This Agreement constitutes the legally valid and binding obligation of 1860 enforceable in accordance with its terms. Neither the entering into of this Agreement, nor the consummation of the transactions contemplated hereby, will constitute a violation or breach by 1860 of any contract or other instrument to which it is a party or to which it is subject, or any judgment, order, writ, injunction or decree issued against or imposed upon it, or will result in any violation of applicable law, order or regulation of any governmental authority.

C. No Suits. 1860 has not received any notice from any governmental unit or agency indicating that the 1860 Exchanged Parcel or any portion thereof, or any operation conducted therein, is in violation of any statute, code, ordinance or regulation (including Environmental Laws), and, to the best of 1860's knowledge no such violation exists. There is no action, suit, litigation or proceeding of any nature pending or threatened affecting the 1860 Exchanged Parcel, or any portion thereof, or which could result in the obtaining of a lien or other interests in the 1860 Exchanged Parcel by any third party, in any court or before or by any federal, state, county or municipal department, commission, board, bureau, agency or other governmental instrumentality, domestic or foreign.

D. No Liabilities. There are no leases or contracts entered into by 1860 affecting the 1860 Exchanged Parcel except for the Billboard Lease which cannot and will not be canceled by 1860 without liability on and as of the Closing. There are no unpaid claims of 1860's contractors, materialmen or laborers which could give rise to a lien against the 1860 Exchanged Parcel. There are no commitments or agreements with any governmental agency or public or private utility affecting the 1860 Exchanged Parcel which have not been disclosed in writing by 1860 to Louisville Metro. 1860 is not in default with respect to any of the obligations or liabilities affecting the 1860 Exchanged Parcel. Until the Closing, 1860 shall maintain the 1860 Exchanged Parcel in its present condition, ordinary wear and tear excepted.

Section 6. Representations and Warranties of Louisville Metro.

In addition to any other express agreements of Louisville Metro contained herein, the matters set forth in this Section constitute representations and warranties by Louisville Metro which shall be true and correct as of the date of this Agreement. In the event Louisville Metro learns, or has reason to believe, that any of the following representations and warranties may cease to be true, Louisville Metro hereby covenants to give notice thereof to 1860 immediately.

A. Authority of Louisville Metro. Louisville Metro is a Kentucky consolidated local government and possesses the full power and authority to enter into and perform this Agreement. This Agreement does not conflict with any contract, agreement or commitment to which Louisville Metro is a party.

B. Binding on Louisville Metro. This Agreement constitutes the legally valid and binding obligation of Louisville Metro enforceable in accordance with its terms. Neither the entering into of this Agreement, nor the consummation of the transactions contemplated hereby, will constitute a violation or breach by Louisville Metro of any contract or other instrument to which it is a party or to which it is subject, or any judgment, order, writ, injunction or decree issued against or imposed upon it, or will result in any violation of applicable law, order or regulation of any governmental authority.

C. No Suits. Louisville Metro has not received any notice from any governmental unit or agency indicating that the City Parcels or any portion thereof, or any operation conducted therein, is in violation of any statute, code, ordinance or regulation (including Environmental Laws), and to the best of Louisville Metro's knowledge no such violation exists. There is no action, suit, litigation or proceeding of any nature pending or threatened affecting the City Parcels, or any portion thereof, or which could result in the obtaining of a lien or other interests in the City Parcels by any third party, in any court or

before or by any federal, state, county or municipal department, commission, board, bureau, agency or other governmental instrumentality, domestic or foreign.

D. No Liabilities. There are no leases or contracts entered into by Louisville Metro affecting the City Parcels which cannot and will not be cancelled by Louisville Metro without liability on and as of the Closing. There are no unpaid claims of Louisville Metro's contractors, materialmen or laborers which could give rise to a lien against the City Parcels. There are no commitments or agreements with any governmental agency or public or private utility affecting Louisville Metro which have not been disclosed in writing by Louisville Metro to 1860. Louisville Metro is not in default with respect to any of the obligations or liabilities affecting the City Parcels. Until the closing, Louisville Metro shall maintain the City Parcels in its present condition, ordinary wear and tear excepted.

Section 7. The Closing Contingencies.

7.1. Contingencies to 1860's Obligation to Close. 1860 shall be under no obligation to convey the 1860 Exchanged Parcel to Louisville Metro unless the following conditions have been satisfied or waived by 1860, in writing, at the time of Closing:

- A.** Louisville Metro shall have tendered to 1860 the quitclaim deed to the City Parcels and the J. Johnson Parcel.
- B.** All of Louisville Metro's representations and warranties shall remain true and correct as of the closing and Louisville Metro shall have performed its other obligations under this Agreement.
- C.** The conveyance of the 1860 Exchanged Parcel to Louisville Metro shall have been authorized by 1860's Board of Directors by duly enacted resolution.
- D.** The Major Subdivision Plat described in Section 2 of this Agreement shall have been approved as provided therein.
- E.** 1860 shall have obtained a judgment of good title to the J. Johnson Parcel.

7.2. Contingencies to Louisville Metro's Obligation to Close. Louisville Metro shall be under no obligation to convey its rights, title and interest in and to the City Parcels

and the J. Johnson Parcel unless the following conditions have been satisfied or waived by Louisville Metro, in writing, at the time of closing:

- A. All of 1860's representations and warranties shall remain true and correct as of the date of Closing and 1860 shall have performed its obligations under this Agreement.
- B. The conveyance of Louisville Metro's rights, title and interest in and to the City Parcels and the J. Johnson Parcel shall have been duly authorized by the Louisville Metro Council by duly enacted resolution.

Section 8. Closing.

8.1. The closing on the City Parcels and the J. Johnson Parcel shall occur no later than thirty (30) days after approval by the Louisville Metro Council described in subsection 7.2.B above and the closing on the conveyance of the 1860 Exchanged Parcel shall occur no later than thirty (30) days after the approval of the Major Subdivision Plat as described in Section 2 of this Agreement. The closings shall occur in Louisville, Kentucky, at the offices of Louisville Metro at a date and time mutually acceptable to the parties.

8.2. Each party shall pay its own legal fees incurred in connection with this Agreement.

Section 9. Notices.

Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing the same in the United States mail, addressed to the party to be notified, postage prepaid and certified, with return receipt requested, or by delivering the same in person to such party. Notice given in accordance herewith shall be effective upon the earlier to receipt at the address of the addressee or on the third day following deposit of same in the United States mail as provided for herein, regardless of whether same is actually received. For purposes of notice, the addresses of the parties shall be as follows:

| | |
|-----------------------------|---------------------------------|
| If to Louisville Metro, to: | Metro Parks |
| | 1297 Trevilian Way |
| | Louisville KY 40213 |
| | Attention: Mike Heitz, Director |

cc: Jefferson County Attorney's Office
444 South Fifth Street, Suite 500
Louisville KY 40202
Attention: JoAnn Burke, Esquire
Assistant County Attorney

If to 1860, to: 1860 Mellwood, LLC
1115 South Fourth Street
Louisville KY 40203
Attention: John M. Clark

Either party may change its address for notice by giving ten (10) days prior written notice thereof to the other party.

Section 10. Commissions.

Each Party shall defend, indemnify, to the extent permitted by Kentucky law, and hold harmless the other party from any claim by any party claiming under such party for any brokerage, commission, finder's, or other fees relative to this Agreement or the sale of its parcels, and any court costs, attorneys' fees, or other costs or expenses arising therefrom, and alleged to be due by authorization of such party.

Section 11. Assigns.

This Agreement shall inure to the benefit of and be binding on the parties hereto and their respective heirs, legal representatives, successors and assigns; provided, however, neither party shall assign its rights nor delegate its duties under this Agreement without the express written consent of the other party.

Section 12. Termination and Remedies.

12.1. If 1860 shall default in the performance of its obligations under this Agreement, and such default continues for five (5) business days after written notice to 1860, and if Louisville Metro is not then in default hereunder and all conditions precedent to 1860's having to close have been satisfied, then Louisville Metro shall have the right either to specifically enforce this Agreement or to terminate this Agreement by notifying 1860 thereof.

12.2. If Louisville Metro shall default in the performance of its obligations under this Agreement, and such default continues for five (5) business days after written notice to Louisville Metro, and if 1860 is not in default hereunder and all conditions precedent to Louisville Metro's having to have been satisfied, then 1860 shall have the right either to specifically enforce this Agreement or to terminate this Agreement by notifying Louisville Metro thereof.

Section 13. Severability. If any provision of this Agreement is adjudicated by a court having jurisdiction over a dispute arising herefrom to be invalid or otherwise unenforceable for any reason, such invalidity or unenforceability shall not affect the other provisions hereof.

Section 14. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky.

Section 15. Modification. No modification hereof or subsequent agreement relative to the subject matter hereof shall be binding on either party unless reduced to writing and signed by the party to be bound.

Section 16. Time of Essence. Time is of the essence in the performance of each and every provision of this Agreement.

Section 17. Survival. The representations, warranties, covenants and agreements set forth in this Agreement shall be continuing and shall survive Closing.

Section 18. Entire Agreement. This Agreement is the entire agreement between 1860 and Louisville Metro concerning the transactions and matters described herein and supersedes all prior communications or agreements between 1860 and Louisville Metro.

IN TESTIMONY WHEREOF, the parties hereto have caused this Agreement to be executed by the duly authorized persons or officers on the day and year first above written.

LOUISVILLE METRO

**LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT, acting by and through
its METRO PARKS**

By:_____

**Michael Heitz
Director**

1860

1860 MELLWOOD, LLC

By:_____

Title:_____

Approved as to Form:

IRV MAZE
JEFFERSON COUNTY ATTORNEY

By:_____
Assistant County Attorney